# INDEX



## CITATIONS

# In the Supreme Court of the United States

OCTOBER TERM, 1947

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No. 731

FOREIGN TRADE MANAGEMENT COMPANY, INCORPORATED,

*v.*

THE UNITED STATES

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the Court of Claims (R. 19-22) has not yet been reported.

### JURISDICTION

The judgment of the Court of Claims was entered on December 1, 1947 (R. 22). On December 23, 1947, by order of the Chief Justice, the time for filing a petition for a writ of certiorari was extended

to and including April 15, 1948 (R. 25). The petition was filed on April 9, 1948. The jurisdiction of this Court is invoked under Section 3(b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether the delivery of certain quantities of copra to the United States during wartime under a valid contract of sale constituted a requisition or taking entitling the owner to just compensation, because petitioner was prevented by wartime government regulation from disposing of the copra at higher prices and compelled to sell the copra to avoid the costs of storage.

STATUTE INVOLVED

Sections 1 and 2 of the Act of October 10, 1940, as amended (c. 836, 54 Stat. 1090; c. 471, 56 Stat. 467; 50 U. S. C. App., Supp. III, 711, 712) read as follows:

> That whenever the President determines that it is necessary in the interest of national defense or prosecution of war to requisition and take over for the use or operation by the United States or in its interest any military or naval equipment or munitions, or component parts thereof, or machinery, tools, or materials, or supplies, necessary for the manufacture, servicing, or operation thereof, ordered, manufactured, procured, or possessed for export purposes, the exportation of which has been prohibited or curtailed in accordance with the provisions of section 6 of the Act approved

July 2, 1940 (Public, Numbered 703, Seventy-sixth Congress; 54 Stat. 714), as heretofore or hereafter amended, or any other law, he is hereby authorized and empowered to requisition and take over for the said use or operation by the United States, or in its interest, any of the foregoing articles or materials, and to sell or otherwise dispose of any such articles or materials, or any portion thereof, to a person or a corporation of the United States whenever he shall determine such action to be in the public interest. Any moneys received by the United States as the proceeds of any such sale or other disposition of any such articles or materials or any portion thereof shall be deposited to the credit of that appropriation out of which was paid the cost to the Government of the property thus sold or disposed of, and the same shall immediately become available for the purposes named in the original appropriation: *Provided, however,* That nothing in this section shall modify or repeal section 14 of Public Law Numbered 671, 76th Congress, approved June 28, 1940.

SEC. 2. Whenever the President shall requisition and take over any article or material pursuant to the provisions of this Act, the owner thereof shall be paid as compensation therefor such sum as the President shall determine to be fair and just. If any such owner is unwilling to accept, as full and complete compensation for such article or material, the sum so determined by the President, such owner shall be paid 50 per centum of the sum so deter-

mined by the President and shall be entitled to sue the United States for such additional sum as, when added to the sum already received by such owner, such owner may consider fair and just compensation for such article or material, in the manner provided by sections 41(20) and 250, title 28, of the Code of Laws of the United States of America: *Provided,* That recovery shall be confined to the fair market value of such article or material, without any allowance for prospective profits, punitive or other damages.

STATEMENT

This is a companion case to No. 730, *Foreign Trade Management Company, Incorporated* v. *The United States,* in which the Government has filed a brief in opposition to certiorari. This case also involves certain quantities of copra, the raw material from which coconut oil and, ultimately, soap, glycerin, and nitroglycerin are processed.

The 840 tons of Portuguese East African copra involved in this suit arrived in New York harbor on June 10, 1942, the day after the export licenses theretofore granted for the 1400 odd tons involved in No. 730 had been cancelled (R. 7, 18). Like the 1400 tons, this smaller shipment was intended for petitioner's South American customers (R. 6, 18). Petitioner's repeated efforts to procure the necessary licenses to export the copra,[1] however, proved

[1] Wartime restrictions made it impossible for copra to be exported from the United States except on special license. Section 6 of the Act of July 2, 1940 (54 Stat. 712) authorized the President, by

as futile as in the case of the 1400 tons, but, in contrast, and despite petitioner's requests that it do so, the Government did not requisition the smaller lot, the 840 tons remaining on lighters in the harbor until they were sold to Commodity Credit Corporation in October, 1942 (R. 7).

The sale of the 840 tons to the Government was negotiated and consummated on petitioner's behalf by American Union Transport, Inc., (the "lienor"), which had been given a lien on the copra and constituted petitioner's agent for the purpose of sale, among other things, in order to secure the payment of monies advanced by it for a portion of the purchase price and other charges paid for the material (R. 7-8). On August 6, 1942, the lienor advised the Board of Economic Warfare (the B. E. W.) of its interest in the copra and requested an early determination of the Government's intentions as to requisition in view of the large daily charges accruing against the shipment for demurrage, insurance, interest and deterioration (R. 10-11). Not having received a response,

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proclamation, to prohibit or curtail the exportation of military supplies whenever he determined that it was necessary to do so in the interests of national defense. By Proclamation 2413, issued on July 2, 1940, the President determined that certain products and materials should not be exported from the United States except when authorized by a license issued by the Secretary of State (5 F.R. 2467), and regulations governing the exportation of those articles were issued the same day (5 F.R. 2469). By Proclamation 2463, issued on March 4, 1941, the President determined that it was necessary, in the interests of national defense, that copra (as well as glycerin and coconut oil, products processed from copra) should not be exported except when authorized by license, as provided in Proclamation 2413 (6 F.R. 1299).

the lienor's president went to Washington on August 12, conferred with the head of the requisitioning division of the B. E. W., and was told that the copra in question would not be requisitioned and could be sold in the private market (R. 11). The lienor thereupon reported the importation of the copra to the War Production Board and requested permission to dispose of it in the domestic market (R. 11-12).[2] On August 29, 1942, the War Production Board replied that the matter had been referred to the requisitioning division of the B. E. W., and, soon thereafter, the lienor's representatives conferred with B. E. W. officials and were told by one of the Board's officers that he could see no objection to a private sale, that there was no ceiling price, and that he knew of no reason why the copra could not be sold (R. 12-13).

Efforts were then made to dispose of the copra on the domestic market and several soap manufacturers offered $123.20 and $137 a ton, but only on condition that they would not be required to turn over the oil and glycerin extracted to the Government; upon being informed that they would be required to do so, the companies withdrew their offers and

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[2] General Imports Order M-63, dated December 27, 1941, provided that no strategic material could be imported by any private person except upon express authorization by the Director of Priorities and that if any such material was imported on a contract made prior to the effective date of the order, the use and disposition thereof were to be subject to specified restrictions and regulations therein set forth (6 F.R. 6796). On January 12, 1942, Amendment No. 2 to the General Imports Order extended this regulation to copra (7 F.R. 223). The disposition and use of all copra in the United States were thus made subject to War Production Board order (R. 11-12).

offered only $106.25 a ton (R. 13-14, 20). Petitioner then wrote the B. E. W., protesting against its action and that of the War Production Board "in attempting to fix a price for this copra by pressure exerted upon the prospective purchaser", and also telegraphed both the B. E. W. and Commodity Credit Corporation, protesting the sale which petitioner was advised the lienor was "being forced * * * by Miguel Crossnay of Commodity Credit Corporation" to make at $106.25 a ton and again urging requisition (R. 14-15). Crossnay immediately telegraphed petitioner that Commodity Credit Corporation had "no jurisdiction or decision over your copra" (R. 15). On the next day, October 6, 1942, the lienor's president again came to Washington, reported the difficulties as to disposition of the copra to the head of the requisitioning division of the B. E. W., and asked what formalities would have to be complied with to permit a private sale (R. 15). The head counsel for the division thereupon told him that if he wished to avoid difficulty and further delay, it would be best for him to sell the copra to Commodity Credit Corporation, which had indicated, in prior discussions with representatives of the Board of Economic Warfare, that it was prepared to pay $106.25 a ton (R. 15). The lienor's president said that he was prepared to sell the copra at that price to Commodity Credit Corporation (R. 15). The appropriate offer to sell to the B. E. W. or Commodity Credit Corporation at $106.25 a ton was then dic-

tated by a B. E. W. lawyer, transcribed on blank paper, signed by the lienor's president, and transmitted to Commodity Credit Corporation by employees of the B. E. W. (R. 15-16). On the next day, a B. E. W. attorney delivered to the lienor's president a letter constituting a counter-offer by Commodity Credit Corporation to purchase the copra at $106.25 a ton upon fulfillment of certain specified conditions (R. 16-17). After consulting his attorney by telephone, the lienor's president accepted the Government's proposal, and, thereafter, the lienor shipped the copra in accordance with the instructions received from Commodity Credit Corporation and received payment as prescribed in the agreement (R. 17).

When it arrived in New York in June, 1942, the 840 tons of copra were intended for shipment to South America on contracts providing for payment of $182 and $196.36 a ton (R. 18). Just prior to and immediately following Pearl Harbor, petitioner had made contracts for the sale of copra to South American purchasers at prices ranging from $135 to $145 a ton, and in March, 1942, had shipped to Colombia 390 tons which had been sold in 1941, at $140 a ton (R. 18).[3]

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[3] In the middle of 1942, a contract of sale was entered into for the purchase of 150 tons at $188 a ton, but this transaction was not carried through because of the lack of shipping facilities (R. 19). During 1944, petitioner had sales contracts with South American firms, at prices of $240 to $245 a ton, and a license was issued to a subsidiary of petitioner for the shipment of 1,000 tons to Colombia at $240 a ton (R. 19). During the year 1942, a price of $145 a ton

On these findings, the court below concluded that the contract of sale made by the lienor on petitioner's behalf was a valid contract and should not be set aside, and that the transactions here involved did not constitute a taking of petitioner's property in the exercise of the eminent domain. The court agreed that the copra had been sold to Commodity Credit Corporation "under pressure," but held that the compulsion, consisting of valid wartime restrictions on the use and disposition of copra, was not unlawful duress such as would invalidate the sale. Consequently, the petition of petitioner was dismissed (R. 19-22).

## ARGUMENT

The record shows, and petitioner does not deny, that the copra in question was delivered to the United States under a contract duly made on its behalf providing for payment at the price of $106.25 a ton, and that that price has been fully paid. Nor does petitioner challenge the validity of the wartime restrictions on the use and disposition of copra which frustrated pending contracts with South American purchasers and made it impossible for petitioner to realize a higher return in the export or domestic trade. Petitioner's sole grievance is that this complex of wartime regulations coupled with the expenses incident to storing the copra to

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was readily obtainable on the South American market and an export license was obtainable for the exportation of copra at that price (R. 19).

await opportunities for a more advantageous bargain "coerced" petitioner into making the sale to the United States. It is on this basis that petitioner insists that the transaction must be viewed as a taking and a judgment rendered for just compensation (Pet. 16-17).

Petitioner's theory is, however, clearly mistaken. Invoked in similar suits, it has consistently been rejected by this Court. Thus, in *American Smelting and Refining Company* v. *United States,* 259 U. S. 75, the company, which had accepted a letter offer by the Procurement Division of the Government to purchase copper at a price certain, thereafter claimed that it was in fact complying with a compulsory order placed under the National Defense Act of June 3, 1916 (c. 134, § 120, 39 Stat. 166, 213), and was, therefore, entitled to the fair and just compensation provided by that statute. The Court, rejecting the company's claim said (259 U. S. at 78-79):

> "* * * The only serious argument is the supposed duress. But that can not prevail. It may be true that the claimant was yielding to the statute in a general way and did not discriminate between what it was required to yield and what it could reserve. But if it had desired to stand upon its legal rights it should have saved the question of the price. It did not do so, but on the contrary so far as appears was willing to contract and was content in the main with what was offered * * *. We are of

opinion that the claimant must stand upon the letters * * *."

Cf. *Liggett & Myers* v. *United States,* 274 U. S. 215.

Again, in *United States* v. *Carver,* 278 U. S. 294, owners of a vessel who were prevented from performing a private charter party for the transportation of chrome ore from Australia to the United States by the intervention of the United States Shipping Board and thereupon instead entered into a charter party with the United States for the transportation of wheat at a specified rate " 'rather than have the United States Government take over' the vessel" (278 U. S. at 297) claimed just compensation for the use of the vessel during the period involved. The Court of Claims held that the Government had cancelled the private contract under the Act of June 15, 1917 (c. 29, 40 Stat. 182), and that the owners were, therefore, entitled to just compensation. This Court reversed, holding that the terms of the charter party with the Government controlled. See, also, *Silliman* v. *United States,* 101 U. S. 465, and *Morrisdale Coal Co.* v. *United States,* 259 U. S. 188.

Moreover, even had the copra here been requisitioned, petitioner's acceptance of the full price agreed upon for the copra would have precluded further recovery. *White Oak Coal Co.* v. *United States,* 15 F. 2d 474 (C. C. A. 4), certiorari denied, 273 U. S. 756.

The decision below is clearly correct. The case presents no novel question of importance. There

is, consequently, no reason for further review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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